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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,389	07/20/2002	John Reynolds	P1646USA	7079

30983 7590 08/23/2005

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EXAMINER

HELMER, GEORGIA L

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,389

Applicant(s)

REYNOLDS, JOHN

Examiner

Georgia L. Helmer

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-9 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-9 and 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

580

Status of the Claims

1. The Office acknowledges receipt of Applicant's Response; dated 6 April 2005.
2. Applicant has requested cancellation claims 6 and 13, and amended claims 6, 8, 9, 13, 14 and 15. Applicant has indicated in Remarks of 6 April 2005, that claims 6 and 13 are cancelled. However, in the Listing of Claims, claims 6 and 13 are amended, whereas claims 2 and 10 are cancelled. In order to expedite prosecution, the Office assumes that claims 2 and 10 are cancelled and claims 6 and 13 are amended. Applicant must address this specifically in the next response, clarifying which claims are pending and which cancelled. Claims 1, 3-9 and 11-15 are pending and are examined in the instant action.
3. This action is made FINAL necessitated by Applicant's amendment.
4. All rejections not addressed below have been withdrawn.
5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112 Enablement

6. Claims 1, 3-9 and 11-15 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, for reasons of record (Office Action of 25 February 2004), which are repeated in part below.

Applicant's arguments filed 6 April 2004 have been fully considered but they are not persuasive.

Applicant is invited to supply clarification and other information, preferably as a Rule 1.132 Declaration, about Applicant's results with the claimed invention. This declaration should demonstrate that only those techniques and starting materials set forth in the specification were relied upon.

Applicant traverses saying primarily (6 April 2005 Response, p. 6) that the enablement rejection should be obviated in view of the attached § 1.132 Declaration prepared, submitting evidence by Declaration that the methods as described in the examples have been used to produce the claimed invention.

The § 1.132 Declaration of John F Reynolds dated 1 April 2005 has been carefully considered and is deemed to be unpersuasive. The § 1.132 Declaration (p. 1) sets forth that "the attached photocopy provides the results...", that "the attached photocopy shows (p. 2) ...". However, no photocopy is offered as evidence.

Claim Rejections - 35 USC § 102

7. Claims 8 and 15 remain rejected under 35 U.S.C. 102(b) as being anticipated by Dommissie, et. al., Onion is a Monocotyledonous Host for Agrobacterium. Plant Science, vol. 69 (1990) pages 249-257; Applicant's IDS.

Applicant traverses saying primarily (Response, p. 7) that Dommissie et. al. do not disclose that plants may be obtained transformed in the manner claimed in the instant case. Applicant further asserts that "such plants are easily distinguishable from an Allium plant transformed by the method of Dommissie et. al.", and that "one skilled in the art could employ any of various means known for detecting a heterologous gene in

Art Unit: 1638

a transformed plant". Applicant's traversal is unpersuasive. The *Allium* plants of Dommissé et. al. contain a heterologous gene, as does the instant product-by-process *Allium* plant. See Thorpe cited previously.

Accordingly, Dommissé et. al. anticipates the claimed invention.

Claim Rejections - 35 USC § 103

8. Claims 1, 3-9 and 11-15 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Eady, et. al., Transformation of Onion (*Allium cepa* L.)1998, Proceedings National Onion Research Conference, Sacramento, CA USA, December 10-12, 1998 (IDS), hereafter referred to as "Eady-1"), in view of Eady et. al., A comparison of four selective agents to use with *Allium cepa* immature embryos and immature embryo-derived cultures, Plant Cell Reports, 1998, vol. 18, pages 117-121, (hereafter referred to as "Eady-2"), and applicant's admitted prior art.

Applicant's response of 6 April 2005 has been carefully considered and is found to be unpersuasive.

The 1.131 Declaration of John Reynolds dated 1 April 2005 asserts (p. 2) that "the attached photocopies are from an internal Biotech Quarterly Report". However, no such photocopies are present, attached or otherwise.

The rejection is maintained.

Accordingly, the claimed invention is prima facie obvious in view of the prior art.

Remarks

Art Unit: 1638

9. No claims are allowed.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

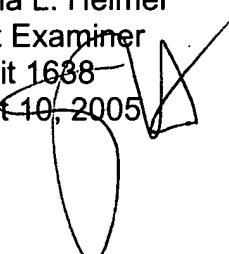
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia L. Helmer whose telephone number is 571-272-0976. The examiner can normally be reached on Monday-Thursday 10:30 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones can be reached on 571-272-0745. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1638

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Georgia L. Helmer
Patent Examiner
Art Unit 1638
August 10, 2005



DAVID T. FOX
PRIMARY EXAMINER
GROUP 180-1638

